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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/940,744	08/28/2001	Christopher Carl Wulforst	5308	5156

7590 01/10/2003

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EXAMINER

OLSEWSKI, JOAN M

ART UNIT PAPER NUMBER

3643

DATE MAILED: 01/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/940,744	<b>Applicant(s)</b> WULFORST ET AL.	
	<b>Examiner</b> Joan M. Olszewski	<b>Art Unit</b> 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____.  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>10</u> . | 6) <input type="checkbox"/> Other:  |

### **FINAL REJECTION**

This is in response to Applicant's amendment and response filed December 02, 2002. Currently, claims 1-14 are pending in this application.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1- 4 and 9-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Denesuk et al. (U.S. Patent 6,196,156) in view of Vickers (U.S. Patent 5,678,247).

Regarding Claims 1-4, and 14, Denesuk et al. disclose an animal bed encasing comprising an enclosure having a face textile (12) with an exterior surface and an interior surface and an odor receiving layer on the interior surface) column 3, lines 7-10 and column 28, lines 49-65, and column 29, lines 1-21). The odor receiving layer can comprise either an absorbing agent or an adsorbing agent which is activated charcoal (column 28, lines 49-65). From Figure 4 it appears that layer 18 would form the odor receiving layer, however since it is felt that the Denesuk et al. reference is not clear as to the location of the odor absorbing material the Vickers reference is used to teach the use of a layer of odor absorbing material (24) formed of fiber and adhesively bonded charcoal disposed on the interior surface of the face textile (20) and the use of a backing material (22) disposed adjacent the odor receiving layer.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the device of Denesuk et al. by locating the odor absorbing material on the interior surface of the face textile as taught by Vickers to provide a more effective odor removal system.

Re- Claims 9-12 the combination of Denesuk et al. and Vickers teaches the backing material (18)(Denesuk et al.) disposed adjacent to the outer layer wherein the backing material can be formed of a vinyl sheet or fabric material (column 9, lines 44-55)(Denesuk et al.) Further, Vickers as combined above teaches the odor absorbent material being located directly below the outer fabric layer with a backing layer located adjacent to the odor adsorbing layer and inwardly thereof. Also, whether the backing material is a woven or point bonded material it is considered obvious since no criticality to this particular fabric structure have been provided.

Re- Claim 13, the combination of Denesuk et al. and Vickers as discussed above discloses all the claimed features including the teaching of the film of the backing material comprising a low density polyester film (column 10, lines 13-14)(Denesuk et al.). It is interpreted that a polyester fiber is a low density polyester.

Claims 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Denesuk et al. and Vickers as applied to claims 1-4 and 9-13 above, and further in view of Ryan et al. (U.S. Patent 5,019,062).

Re-Claims 5-8, the combination of Denesuk et al. and Vickers discloses all the claimed features as discussed above except for including the activated charcoal of

about 100 x 150 particle screened size at a rate of 1.5 ounces per square yard to about 3 ounces per square yard. However, Ryan et al. disclose in a similar field of endeavor of odor control agents, a material with an odor layer of activated charcoal which has a particle size of 2-4 microns (Column 3, lines 48-52) and is applied with a hot melt adhesive at about 3, mg per sq. cm which is about 1 ounce per sq. yard (column 4, lines 19-31) and is considered to meet the range of "about 1.5 ounces per square yard to about 3 ounces per square yard".

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the combination device of Denesuk et al. and Vickers to include a micron particle size activated charcoal distributed at the claimed rate of about 1.5 ounces per square yard to about 3 ounces per square yard for the purposes of providing the optimum size and distribution of the odor agents to adsorb odor.

Although Ryan et al. do not specifically disclose a 100 x 150 particle screened size, a small particulate composition is disclosed and it would have been obvious to change the particle size in order to achieve an optimum particle size and range for adsorbing the odor.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-14 are deemed moot in view of the new grounds of rejection above.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joan M. Olszewski whose telephone number is 703-305-2693. The examiner can normally be reached on Monday-Friday (5:30-3:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703-308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Joan M. Olszewski  
Examiner  
Art Unit 3643

JMO  
January 7, 2003

A handwritten signature in black ink, appearing to read "P. M. Poon", is written above the printed name.

PETER M. POON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600